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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICOH COMPANY, LTD.,

No. C 03-4669 MJJ

Plaintiff,

v.

**ORDER DENYING DEFENDANTS'
MOTION FOR STAY AND DENYING
PLAINTIFF'S MOTION FOR
CONSOLIDATION**

AEROFLEX INC., et al.,

Defendants.

Having read and considered the briefing and oral argument with respect to Defendants' motion to stay this action pending the outcome in the related case of *Synopsis v. Ricoh*, 03-2289-MJJ, the Court hereby **DENIES** Defendants' motion. As expressed by the Court at oral argument, the Court finds that there is an inadequate basis to conclude that the overlap in infringement issues in the two cases is so substantial as to render the case within the customer suit exception to the first-to-file rule. Rather, on the limited record before the Court it appears Ricoh has a "separate interest" in litigating against Defendants in the first-filed action. *See, e.g., American Academy of Science v. Novell, Inc.*, 24 U.S.P.Q.2d 1386, *7 (N.D. Cal. 1992); *A.P.T., Inc. v. Quad Environmental Technologies Corp.*, 698 F. Supp. 718, 721 (N.D. Ill. 1988). Accordingly, it would be inappropriate

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1 to stay the case at this time. *See Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal.
2 1997) (discussing factors court considers in deciding whether to grant stay).

3 Likewise, Plaintiff's motion to consolidate is **DENIED** as premature.

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5 **IT IS SO ORDERED.**

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7 Dated: December 11, 2003


MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE